

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1766 of 1999

with

CIVIL REVISION APPLICATION No 1767 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUDHIR RANCHHODDAS TRIPATHI

Versus

SURESH JATASHANKAR JOSHI

Appearance:

1. Civil Revision Application No. 1766 of 1999
MR MEHUL S SHAH for Petitioner
MR MB GANDHI for Respondent
2. Civil Revision ApplicationNo 1767 of 1999
MR MEHUL S SHAH for Petitioner
MR MB GANDHI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. On 21.9.1999 learned trial court passed the order below Exh.61/D and 59/D. Exh.61/D is the application filed by the plaintiff - respondent for amendment of the plaint. Exh.59/D is the application filed by the defendant - petitioner under Order 7, Rule 11 of the Civil Procedure Code. The order passed on the application of the plaintiff - respondent by the court below is as under.

"Heard.

Looking to the facts and circumstances of the case, in the interest of justice this application is allowed.

Amendment to be carried out on or before
21.9.1999."

The order passed on the application of the defendant - petitioner reads as under.:

"Heard.

As the amendment application is allowed, the prayer to reject the plaint stands rejected.

#. Learned counsel for the petitioner contended that the learned trial court has passed a cryptic order. It has committed serious procedural irregularity which ultimately effect the final decision in the suit. In his submission, both the orders may be quashed and set aside and the matter may be remanded back with the directions to the trial court to decide the same on merits after passing the speaking order.

#. Mr.Gandhi, learned counsel for the plaintiff respondent contended that both the orders have been passed on the consent of the defendant - petitioner. On merits he admits that these orders are cryptic orders.

#. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, both these revision applications deserve to be allowed.

#. I do not find anything on record of these civil revision applications that these orders have been passed by the court below on the consent of the defendant petitioner. In the orders also, it is not mentioned that these orders are passed on the consent of the defendant petitioner. The contention raised by the learned counsel for the respondent cannot be accepted.

#. Grant of amendment in the plaint as well as rejection of the application filed by the defendant - respondent under Order 7, Rule 11 of the Civil Procedure Code are serious matters and the same are to be decided by passing a speaking order. The way and manner in which the court below has decided these matters deserves to be deprecated. The trial court while allowing the application for amendment of the plaint, has to record reasons in support of its order, though it is not required to give lengthy order, but reasons are to be given. Similarly, the application for rejection of the plaint under Order 7, Rule 11 of the Civil Procedure Code is to be dealt with on merits and where the prayer is not acceptable, the trial court has to record reasons. That what precisely has not been done in the present case. The trial court while passing the impugned order has not taken care of legal position that in support of the order, reasons are to be recorded.

#. I find sufficient merits in the contention that the learned trial court has committed serious procedure irregularity and this case certainly falls under clause (c) of subsection 1 of section 115 of the Civil Procedure Code. The application of the defendant - petitioner filed under Order 7, Rule 11 of the Civil Procedure Code is dismissed only on the ground that the court has permitted amendment in the plaint. In case both these orders are allowed to stand, certainly it will occasion failure of justice and cause irreparable injury to the defendant - petitioner. Possibility of dismissal of the suit under Order 7, Rule 11 may be there and this has to be decided on merits.

#. In the result, both these civil revision applications succeed and the same are allowed. The orders of the court below are quashed and set aside. Learned trial court is directed to decide both these applications, that is, application of the plaintiff - respondent for amendment of the plaint and that of the defendant petitioner for rejection of the plaint under Order 7, Rule 11 of the Civil Procedure Code on merits after hearing both the parties. The trial court has to pass a reasoned order, but it does not mean lengthy order but to

record reasons in support of its order. Rule is made
absolute in both these civil revision applications
accordingly with no order as to costs.

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(pathan)